

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,) CR06-0206RSM
vs.)
Plaintiff,) ORDER ON
vs.) AGREED MOTION FOR
EDGARDO COLOSIO-DUSSAN,) EXTENSION OF TIME TO
JACIEL ORANGA-ZUNIGA,) FILE PRETRIAL MOTIONS
OSVOLDO SORIANO-SILVA,) AND TO CONTINUE TRIAL
DIOGENES AUSTUDILLO-ZINSER, and)
STEVEN BRUCE McKAY)
Defendants.)

THIS MATTER came before the Court upon the joint motion of Defendant Edgardo Colosio-Dussan (1), through his attorney, Richard A. Smith, Defendant Jaciel Oranga-Zuniga (2), through his attorney, Ken Kanev, Defendant Osvoldo Soriano-Silva (3), through his attorney, Thomas Campbell, Defendant Diogenes Austudillo-Zinser (4), through his attorney, John Crowley, and Defendant Steven McKay (9), through his attorney, Ralph Hurvitz, and the United States of America, through Sarah Y. Vogel, Assistant United States Attorney, requesting an extension of time in which to file pretrial motions and for continuance of the trial.

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1 On January 3, 2007, the Court conducted a Status Conference to address this matter, at which
2 all defendants were present. At that Conference, the Court informed all of the defendants of their
3 right to a speedy trial. Counsel for all defendants, except counsel for Austudillo-Zinser who was not
4 present, indicated that they required additional time in order to prepare, and that their clients agreed
5 to the delay.

6 Having considered the unopposed motion, the statements of the attorneys at the status
7 conference, and all other the files and records herein, the Court makes the following specific
8 findings:

- 9 1. This is a complex case which requires thorough investigation and pretrial preparation. The
10 Government has already produced several thousands of pages of discovery, which defense
11 counsel must review and analyze in preparation for pretrial motions or any possible trial, and
12 the Government has informed the defense that, as more evidence is unearthed during the
13 investigation, more discovery may be produced prior to trial.
- 14 2. DEA conducted a federal wiretap investigation in this case from March, 2006, until June,
15 2006. During that time, DEA intercepted several thousand calls which have been turned over
16 to the defense.
- 17 3. This case involves evidence obtained from a number of different search locations and sources.
18 The government has provided the defendants with several wiretap and search warrant
19 affidavits, and the accompanying pleadings, as well as the DEA reports documenting the
20 investigation, arrests, and searches. In total, the government has produced more than 3,000
21 pages of documents, plus fifteen digital disks containing audio and video files, to date.
- 22 3. In addition, there are approximately 100 disks presently in the Government's possession
23 which were returned to them by the Federal Defender's office at time of substitution of
24 counsel in the case of Edgardo Colosio-Dussan, which have yet to be reviewed by counsel.
25 Those disks contain additional photos, video, and audio recordings obtained by the
26 Government during their investigation.

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4. The defendants are facing substantial penalties if convicted, given the amount of cocaine and
2 heroin and other items seized in this case.

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5. Four of the defendants are non-native English speakers, and their intercepted calls are in
4 Spanish, English, and *Mixteco Bajo*, a language indigenous to Southern Mexico for which it
5 is very difficult to find qualified translators. Transcript preparation for the *Mixteco* calls has
6 proven to be very time consuming. Only some of the *Mixteco* calls have been translated to
7 date. Once translations are complete, defense counsel will require additional time to review
8 and analyze the discovery and to investigate this case in order to properly represent their
9 respective defendants through any pretrial motions practice (including motions to suppress),
10 plea negotiations and/or trial. Defense counsel also desire additional time to conduct witness
11 interviews and other pretrial preparation.

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6. There has been no motion for severance of defendants.

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7. Counsel for Jaciel Oranga-Zuniga, Ken Kanev, was appointed in mid-December, 2006, and it
14 is unrealistic to expect him adequately to be prepared for a trial in less than two or three
15 months, given the facts specific to this case as discussed above.

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8. All defendants have submitted or soon will submit valid written speedy trial waivers through
17 April 23, 2007.

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9. The moving parties agree that a continuance is needed in order to give defense counsel the
19 reasonable time necessary for effective preparation, including to review the evidence and to
20 consider possible defenses, taking into account the exercise of due diligence. The moving
21 defendants agree that the time between the filing of the motion to continue and the new trial
22 date should be excluded for speedy trial purposes under 18 U.S.C. § 3161(h)(8)(A) and (B),
23 and agree to submit written waivers of speedy trial.

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26 BASED ON THESE FACTS, AND THOSE APPARENT FROM THE RECORD, THIS
27 COURT FINDS, pursuant to Title 18, United States Code, Section 3161(h)(8)(B)(i), that failure to

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1 grant such a continuance in the proceeding would likely make a continuation of such proceeding
2 impossible, or result in a miscarriage of justice;

3 THIS COURT FURTHER FINDS, pursuant to Title 18, United States Code,
4 Section 3161(h)(8)(B)(iv), that failure to grant the continuance in this case, would deny counsel for
5 the defendants the reasonable time necessary for effective preparation, due to counsels' need for
6 more time to review the evidence and consider possible defenses and motions, taking into account the
7 exercise of due diligence;

8 THIS COURT FURTHER FINDS, pursuant to Title 18, United States Code,
9 Section 3161(h)(7), that this is a reasonable period of delay in that the defendants are joined for trial,
10 one defendant has newly-appointed counsel who cannot be expected to be prepared for trial for at
11 least two-three months, the remaining defendants' attorneys have indicated that they need more time
12 to prepare for trial, and the defendants themselves have agreed that the delay is necessary;

13 THIS COURT FURTHER FINDS, therefore, that pursuant to Title 18, United States Code,
14 Section 3161(h)(8)(A), in light of the interest of the public in ensuring the accused adequate,
15 effective, and continued representation by counsel presently assigned, and the specific facts present
16 at this time in this case, the ends of justice served by granting a continuance outweigh the best
17 interest of the public and defendants in a speedy trial;

18 THIS COURT FURTHER FINDS that all of the time between the previous trial date and the
19 new trial date is necessary to provide counsel for the defendants the reasonable time necessary to
20 prepare for trial.

21 NOW, THEREFORE, IT IS HEREBY ORDERED that the trial date will be continued until
22 **April 16, 2007, at 9:00 a.m.**, and that pretrial motions are due by **February 22, 2007**.

23 IT IS FURTHER ORDERED that time from the filing of the motion to continue through the
24 new trial date shall be excluded from computation under 18 U.S.C. §§ 3161(h)(8)(A),
25 3161(h)(8)(B)(i), and 3161(h)(8)(B)(ii) for all defendants because the failure to grant the requested
26 continuance would be likely to result in a miscarriage of justice, and because the case is so complex
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1 due to the number of defendants, the nature of the prosecution, and the existence of novel questions
2 of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the
3 trial itself within the time limits established by the Speedy Trial Act, and under 18 U.S.C. §
4 3161(h)(7), because the defendants are all joined for trial and no motion for severance has been
5 granted.

6 DATED this 18th day of January, 2007.
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10 RICARDO S. MARTINEZ

11 UNITED STATES DISTRICT JUDGE
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